

**NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN  
THE CITY OF DRAPER AND GOOGLE FIBER UTAH LLC  
FOR THE INSTALLATION OF NETWORK FACILITIES  
IN THE CITY PUBLIC RIGHT-OF-WAY**

This License Agreement (“**Agreement**”) is by and between the City of Draper, a Utah municipality (“**City**”), and Google Fiber Utah, LLC, a Delaware limited liability company, and its subsidiaries, successors, or assigns (“**Licensee**”).

**RECITALS**

- A. City has jurisdiction over the use of the public rights-of-way in City in which it now or hereafter holds any property interest (“**Public ROW**”).
- B. Licensee desires, and City desires to permit Licensee, to install, maintain, operate, and/or control a fiber optic infrastructure network in Public ROW (“**Network**”) for the purpose of offering communications services, including broadband Internet access service as defined in 47 C.F.R. § 8.1(b) (“**Broadband Internet Services**”), but excluding telecommunications services as defined in 47 USC 153(53) and multichannel video programming services that would be subject to a video services franchise, to residents and businesses in City (“**Customers**”).
- C. The Network may consist of equipment and facilities that may include aerial strand; aerial or underground fiber optic cables, lines, or strands; underground conduits, vaults, access manholes and handholes; electronic equipment; power generators; batteries; pedestals; boxes; cabinets; and other similar facilities (“**Network Facilities**”).

**AGREEMENT**

In consideration of the mutual promises made below, City and Licensee agree as follows:

**1. Permission to Encroach and Occupy.**

- 1.1. Permission to Encroach on and Occupy Public ROW. Subject to the conditions set forth in this Agreement, City grants Licensee permission to encroach on and occupy the Public ROW (the “**License**”) for the purpose of constructing, installing, repairing, maintaining, operating, and if necessary removing the Network and the related Network Facilities (the “**Work**”). This Agreement and the License do not authorize Licensee to use any property other than the Public ROW. Licensee’s use of any other City property, including poles and conduits, will be governed under a separate Agreement regarding that use.
- 1.2. Subject to State and Local Law. This Agreement and the License are subject to City’s valid authority under State and local laws as they exist now or may be amended from time-to-time, and subject to the conditions set forth in this Agreement. City expressly reserves the right to adopt, from time to time, in addition to City ordinances already in effect, other such ordinances and rules and regulations as City may deem necessary in the lawful exercise of its police power for the protection of City property, the Public ROW, and the health safety, and welfare of its citizens and their properties. Licensee agrees to comply with all such applicable ordinances, rules and regulations presently in effect, and with all such lawful, nondiscriminatory, competitively neutral ordinances, rules and regulations City may subsequently enact.

- 1.3. Subject to City's Right to Use Public ROW. This Agreement and the License are subject and subordinate to City's prior and future and continuing right to use the Public ROW, including but not limited to constructing, installing, operating, maintaining, repairing, or removing roadway improvements, sewers, water pipes, storm drains, gas pipes, utility poles, overhead and underground electric lines and related facilities, and other public utility or public improvement uses within the ROW. The Parties acknowledge the City does not own all the utilities in the Public ROW and this Agreement is subordinate to the rights of other entities who already occupy the Public ROW whether by franchise or other agreement, by virtue of possessing a real property right in the Public ROW, or by operation of law.
- 1.4. Subject to Pre-Existing Property Interests. City's grant of the License is subject to all valid pre-existing franchises, easements, restrictions, conditions, covenants, encumbrances, claims of title or other property interests that may affect the Public ROW. Licensee will obtain at its own cost and expense any permission or rights as may be necessary to accommodate such pre-existing property interests.
- 1.5. No Grant of Property Interest. The License does not grant or convey any property interest.
- 1.6. Non-Exclusive. The License is not exclusive. City expressly reserves the right to grant and renew licenses, permits, franchises, privileges or other rights to any other individual, corporation, partnership, limited liability company, trust, joint stock company, business trust, unincorporated association, joint venture, governmental authority or other entity of any nature whatsoever ("**Person**"), as well as the right in its own name as a municipality to use Public ROW for similar or different purposes allowed Licensee under this Agreement.
- 1.7. Limitations. Licensee will not provide services directly regulated by the Utah Public Service Commission ("PSC") unless authorized by the PSC. Licensee will not operate a cable system as defined in the Cable Communications Policy Act of 1984 (47 USCA §521, et seq., as amended) without first having obtained a separate cable franchise from the City. Licensee shall not permit the use of its Network Facilities in any manner that is solely intended to avoid or seek to avoid the need for a franchise from the City for the business of another person or entity. Nothing in this Section prohibits Licensee from offering Services to another Person who has authority to use and occupy the Public ROW.
- 1.8. Wireless Facilities. The Network Facilities will not include any wireless facilities and will not be deployed by Licensee to provide "wireless services" or act as a "wireless service provider" by way of the placement of wireless facilities in the Public ROW for purposes of the Small Wireless Facilities Deployment Act, codified as Utah Code Ann. § 54-21-101, et seq. effective 1 September 2018, as the same hereafter may be amended (the "Small Cell Act"), except pursuant to a separate franchise or license agreement with City. The terms "wireless facility," "wireless services," "wireless service provider," as used above are all as defined in the Small Wireless Facilities Deployment Act.
- 1.9. Non-Discrimination. City's grant of the License will be open, comparable, nondiscriminatory, and competitively neutral and City will at all times treat Licensee in a non-discriminatory manner as compared to other non-incumbent providers offering facilities-based Broadband Internet Services.

## 2. Licensee's Obligations.

2.1 Licensee shall comply with and follow all applicable City ordinances, in all work it performs in the Public ROW. Licensee may only deviate from obligations in this Subsection 2.1 and its subsections to the extent approved in writing by the Public Works director.

2.1.1 Licensee shall obtain all required permits or approvals for construction, maintenance and operations, and shall at all times be subject to and comply with all applicable laws, statutes, codes, rules, regulations, standards, fee schedules, and procedures regarding the construction, operation and maintenance of the Network Facilities in the Public ROW, now in force or which, hereafter, may be promulgated (including but not limited to applicable zoning, land use, historic preservation ordinances, safety standards, and other applicable requirements) and good industry practices. City may inspect the manner of such work and require remedies as may be necessary to assure compliance. In the event Licensee should fail to comply with the terms of any City ordinance, regulation or requirement, City shall give Licensee written notice of such non-compliance and the time for correction provided by ordinance or as provided herein.

2.1.2 All work in the Public ROW shall be done in a timely, expeditious and safe manner, and in a manner which minimizes the inconvenience to the public or individuals, and shall follow the City ordinances and Draper City standards and specifications for construction projects, and the Manual of Uniform Traffic Control Devices (MUTCD).

2.1.3 Licensee will place its Network Facilities in conformance with the permits, plans, and drawings approved by City. All Network Facilities constructed by Licensee shall be located so as to cause minimum interference with and injury to (i) public use of the Public ROW; (ii) Existing sewer lines, gas lines, water mains, storm water infrastructure, street lights, or any other municipal use of the Public ROW; (iii) trees and other natural features.

2.1.4. All public and private property in or adjacent to dedicated easements disturbed by Licensee's construction or excavation activities shall be restored promptly by Licensee, at its expense, to substantially its former condition, subject to inspection by City and compliance by Licensee with remedial action required by the City Engineer or his representative pursuant to said inspection.

2.1.5 Licensee will promptly repair any damage to the Public ROW, City property, or private property if such damage is caused by the Work of Licensee, its contractors, subcontractors, employees, agents or assigns, and no other person is solely responsible for the damage (e.g., where a person other than Licensee fails to accurately or timely locate its underground facilities as required by State law). Licensee shall promptly notify the affected owner of the damaged property, and shall promptly repair the damaged property to substantially its former condition, and in accordance with the City's standards and specifications for construction projects, if applicable. Licensee's obligation under this Subsection 2.1.5 shall be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work. Licensee's restoration work will start promptly but not later than (i)

- twenty-four (24) hours from City notifying Licensee of damage that poses an imminent threat to public health or safety, (ii) seventy-two (72) hours from City notifying Licensee of damage that affects roads or highways, or (iii) fourteen (14) days from City notifying Licensee of all other types of damage. City must notify Licensee of damage under clauses 2.1.5(ii) and (iii) in writing, but may notify the Licensee by any means of its choice in respect to 2.4(i). Notwithstanding anything to the contrary, if sent by electronic mail, the City's written notice will be effective upon transmittal.
- 2.2. Licensee's Sole Cost and Expense. Licensee will perform the Work at its sole cost and expense.
  - 2.3. Compliance with Laws. Licensee will comply with all applicable laws and regulations when performing the Work.
  - 2.4. Undergrounding. Licensee will use its best efforts to install or relocate its Network Facilities underground. If after utilizing such best efforts and if any third-party electricity or communications transmission or distribution facilities remain above ground, Licensee may install or keep and retain its Network Facilities above ground on existing utility poles but only to the same extent that such third-party electricity or communications transmission or distribution facilities remain above ground.
  - 2.5. Reasonable Care. Licensee will exercise reasonable care and shall act in a safe manner when performing the Work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater. The installation, maintenance, renovation, and replacement of Licensee's Network Facilities in the Public ROW shall be performed in a good and workmanlike manner.
  - 2.6. Non-Interference. Licensee will place its Network Facilities in conformance with the permits, plans, and drawings approved by City. Licensee will not place its Network Facilities in such a fashion as to unduly burden the present or future use of Public ROW and the Network Facilities shall be installed and maintained by Licensee so as to cause the minimum interference with the use of Public ROW and with the rights or reasonable convenience of property owners that adjoin Public ROW.
  - 2.7. No Nuisance/Graffiti. Licensee will maintain its Network Facilities in good and safe condition so that its Network Facilities do not cause a public nuisance. Licensee will remove all graffiti from the identified Network Facilities in accordance with requirements under City's municipal code.
  - 2.8. Emergency Repairs. In any emergency event in which Licensee needs to cut or excavate a Public ROW, and in which Licensee must act immediately and is unable to obtain a permit for excavating in the Public ROW from the City beforehand, Licensee shall provide the City Public Works Department with notification of such work as soon as practicable by calling the City Public Works Department at its regular number, or if after the Department's business hours, by calling the phone number listed on the permit or such other emergency telephone number provided to Licensee by the City, and shall report the emergency and all related information requested by the City representative on call. In the event Licensee is unable to reach a City representative by calling the City's emergency telephone number, then Licensee shall continue to try to reach a City representative by calling that number or by reaching the City's Public Works Department by the fastest means possible, but shall in any event call the Public

Works Department to report the emergency within the first hour of the next day on which the City is open for business. Licensee shall give the City the telephone number of Licensee's representative(s) for contact about work in the Public ROW or in an emergency. Licensee shall have a representative available by telephone at all times when work is being done in the Public ROW

- 2.9. Identification of Network Facilities. Licensee will identify its Network Facilities using an identification method mutually agreed upon by the parties, or as established by standard industry practices and reasonably directed by City if the parties cannot mutually agree on an identification method. For underground facilities, the identification will be detectable without opening the street or sidewalk.
- 2.10. Cooperation in Joint Trench Opportunities. Licensee will cooperate with City in identifying ways to minimize the amount of construction in the Public ROW through joint trenching, sharing duct banks, and cost sharing with City and third parties undertaking similar construction projects involving the installation of underground communications facilities. Licensee's cooperation obligation is subject to any such proposed joint trenching, duct sharing, and cost sharing opportunities being sufficiently compatible with Licensee's plans, as reasonably determined by the Licensee. Without limiting the foregoing, (i) the cooperation opportunity would not be deemed sufficiently compatible with Licensee's plan where the opportunity involves different areas of the Public ROW than Licensee has permission to occupy under this Agreement, or would unreasonably delay or otherwise hinder Licensee's construction plans, and (ii) Licensee is not obligated to cooperate if Licensee enters into a commercial cooperation agreement reasonably satisfactory to the Licensee with respect to such joint trenching or other cooperation with City or the third-party, as applicable. Licensee will make good faith efforts to enter into any such commercial cooperation agreement in connection with fulfilling the foregoing cooperation obligation.
- 2.11. As-Built Drawings and Maps. Licensee will maintain accurate as-built drawings and maps of its Network Facilities located in City and will provide them as shapefiles and PDF to the City subject to applicable confidentiality protections claimed by Licensee under the Government Records and Management Act, Chapter 2, Title 63, Utah Code Ann., or its successor ("**GRAMA**").
- 2.12. Utility Notification Program. Licensee shall participate in and be a member of the State's utility notification program, whether provided for by statute or otherwise.
- 2.13. Network Design. Nothing in this Agreement requires Licensee to build to all areas of City. Licensee retains the discretion to determine the scope, location, and timing of the design and construction of the Network. Licensee, at its sole discretion, may determine separately defined geographic areas with City where its Network Facilities will be deployed, and City will be available to consult with Licensee regarding the boundaries of City's recognized neighborhood associations and City's goals of equity and inclusion.
- 2.14. Access to Services. Licensee shall not deny service or access, or otherwise discriminate on the availability, rates, terms, or conditions of Broadband Internet Services provided to residential subscribers on the basis of race, color, creed, religion, ancestry, national origin, gender, sexual orientation, disability, age, familial status, marital status, or status with regard to public assistance. Licensee shall comply at all times with all applicable Federal, state, and local laws and regulations relating to



nondiscrimination. Licensee shall not deny or discriminate against any group of actual or potential residential subscribers in City on access to or the rates, terms, and conditions of Broadband Internet Services because of the income level or other demographics of the local area in which such group may be located.

- 2.15. Public Benefits. Licensee agrees to use good faith efforts to consult with City on developing initiatives designed to benefit the public, which may include increasing access to Broadband Internet Services, improving digital literacy, and bridging the digital divide.

### 3. Relocation, Removal, Expiration, Revocation, and Inspection.

- 3.1. Emergency Removal or Relocation by City. In the event of a public emergency, as identified at the City's reasonable discretion, that creates an imminent threat to the health, safety, or property of City or its residents, City may remove or relocate the applicable portions of the Network Facilities without prior notice to Licensee. City will, however, make best efforts to provide prior notice to Licensee before making an emergency removal or relocation. In any event, City will promptly provide to Licensee a written description of any emergency removals or relocations of Licensee's Network Facilities. Licensee will reimburse City for its actual, reasonable, and documented costs or expenses incurred for any such work performed by City. Licensee's obligation to reimburse City under this section is separate from Licensee's obligation to pay the License Fee (as defined below).
- 3.2. Removal of Abandoned Network Facilities. If Licensee abandons or fails to use any portions of its Network Facilities for one year or more ("**Abandoned Network Facilities**"), Licensee will notify City and will remove any aboveground facilities at its own expense at City's request within a commercially reasonable period of time. City and Licensee will discuss whether underground facilities should be abandoned in place or transferred to City, at City's option. Abandoned Network Facilities do not include Network Facilities intended for emergency use, redundant Network Facilities, or Network Facilities intended to meet future demand or capacity needs.
- 3.3. Relocation to Accommodate Governmental Purposes. If Licensee's existing Network Facilities would interfere with City's planned use of the Public ROW or other City property for a legitimate governmental purpose, such as construction, installation, repair, maintenance, or operation of water, sewer, or storm drain line/facilities, public roads or curb, gutter and sidewalk, parks, and recreational facilities, Licensee will, upon written notice from City, relocate its Network Facilities at Licensee's sole cost and expense to such other location or locations in the Public ROW as may be mutually agreed by the parties, taking into account the needs of the City's governmental purpose and Licensee's interest in maintaining the integrity and stability of its Network. Licensee will relocate its Network Facilities within a commercially reasonable period of time agreed to by the parties, taking into account the urgency of the need for relocation, the difficulty of the relocation, and other relevant facts and circumstances, except that City may not require Licensee to relocate or remove its Network Facilities with less than one hundred and eighty (180) days' notice.
- 3.4. Relocation to Accommodate Commercial Purposes. If Licensee's existing Network Facilities would interfere with City's planned use of the Public ROW or City property for a commercial purpose, or with a third-party's commercial use of the Public ROW, Licensee will not be required to relocate its Network Facilities unless City or the third

party enters into an agreement with Licensee under which City or the third party would, at a minimum: (a) identify and arrange for a new location for Licensee's Network Facilities that is acceptable to Licensee, (b) agree to a commercially reasonable period of time for the relocation, which in no event will be less than one hundred and eighty (180) days; and (c) agree to reimburse all of Licensee's reasonable direct and indirect costs, expenses, and losses associated with the requested relocation.

- 3.5. Post-Removal Restoration of Public ROW. When removal or relocation is required under this Agreement, Licensee will, after the removal or relocation of the Network Facilities, at its own cost (except to the extent subject to reimbursement pursuant to Section 3.4 hereof), repair and return the Public ROW in which the facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by City. Before proceeding with removal or relocation work, Licensee will obtain from the City a street encroachment permit.
- 3.6. Inspection by City. Installation of the Network Facilities shall be subject to inspection by City as provided in the City's municipal code.

4. **Contractors and Subcontractors.**

- 4.1. Use of Contractors and Subcontractors. Licensee may retain contractors and subcontractors to perform the Work on Licensee's behalf.
- 4.2. Contractors to be Licensed. Licensee's contractors and subcontractors used for the Work will be properly licensed under applicable law.
- 4.3. Authorized Individuals. Licensee's contractors and subcontractors may submit individual permit applications to City on Licensee's behalf, so long as the permit applications are signed by individuals that Licensee has authorized to act on its behalf via a letter of authorization provided to City in the form attached as **Exhibit A ("Authorized Individuals")**. City will accept permit applications under this Agreement submitted and signed by Authorized Individuals, and will treat those applications as if they had been submitted by Licensee under this Agreement.

5. **Compensation for Use of Public ROW.** Licensee will pay City a fee ("**License Fee**") to compensate City for Licensee's use and occupancy of Public ROW pursuant to the License. Licensee and City acknowledge and agree that the License Fee provides fair and reasonable compensation for Licensee's use and occupancy of Public ROW and other City property as authorized. The License Fee will begin accruing on the Effective Date (as defined below) and will be calculated as follows:

- 5.1. License Fee. Licensee will pay City two percent (2%) (the "**Revenue Percentage**") of Gross Revenues for a calendar quarter, remitted on a quarterly basis, commencing upon the first date on which Licensee receives any Gross Revenues (as defined below). Such payments are due forty-five (45) days after the end of the calendar quarter.
- 5.1.1. As used herein, "**Gross Revenues**" means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Licensee from Customers for Broadband Internet Services that are provided to Customers through Network Facilities located at least in part in Public ROW.

5.1.2. Gross Revenues do not include:

- (i) any revenue not actually received, even if billed, such as bad debt;
- (ii) refunds, rebates, or discounts made to Customers or City;
- (iii) revenue received from the sale of Broadband Internet Services for resale in which the purchaser is required to collect and remit similar fees from the purchaser's customer;
- (iv) any forgone revenue from Licensee's provision of Broadband Internet Services to Customers at no charge if required by state law;
- (v) any tax of general applicability imposed upon Licensee or its Customers by City or by any state, federal, or any other governmental entity, and required to be collected by Licensee and remitted to the taxing entity (including but not limited to sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, communications taxes, and fees not imposed by this Agreement); and
- (vi) any forgone revenue from Licensee's provision, in Licensee's discretion or otherwise, of free or reduced cost Broadband Internet Services to any Person; provided, however, that any forgone revenue which Licensee chooses not to receive in exchange for trades, barter, services, or other items of value will be included in Gross Revenues.

5.2. Pass Through. Licensee may identify and collect, as a separate item on the regular bill of any customer whose Broadband Internet Services are provided by Network Facilities located at least in part in Public ROW, that customer's pro rata amount of the License Fee.

5.3. Audit. City may examine the business records of Licensee as permitted under state or local law, but in any event only during reasonable times and following reasonable notice, and only to the extent reasonably necessary to ensure compliance with this Section 5. Licensee will keep all business records reflecting its Gross Revenues for at least two (2) years. City may, in the event of a dispute concerning compensation under this Section 5, bring an action in a court of competent jurisdiction.

5.4. Government Records Access and Management Act. City is subject to the requirements of GRAMA. All materials submitted to City by Licensee pursuant to this Agreement are subject to disclosure unless such materials are exempt from disclosure under GRAMA. The burden of claiming an exemption from disclosure shall rest solely with Licensee, and Licensee shall comply with the requirements of GRAMA in asserting any such exemption. Such materials may be classified as "protected" by City under GRAMA. City shall make reasonable efforts to notify Licensee of any requests made for disclosure of documents submitted under a claim of confidentiality. Licensee may, at Licensee's sole expense, take any appropriate actions to prevent disclosure of such material.

5.5. Interest on Late Payments. Any payments that are due and payable under this Agreement that are not received within fifteen (15) days from the due date will be assessed interest compounded at the rate of 18% per annum from the due date. All



sums paid with interest within thirty (30) days of the due date shall not constitute a material breach under Section 11.1.

- 5.6. Change in Law. Notwithstanding anything to the contrary herein, in the event of a change in local, state, or federal law that (i) prohibits collection of any right-of-way-access fee from any provider of video programming or communications services, including Broadband Internet Services or (ii) reduces the percentage of revenue on which the right-of-way-access fee paid by any provider of video programming or communications services is based to a percentage that is lower than the Revenue Percentage, then Licensee will have no obligation to pay the License Fee or to pay a Licensee Fee based on the Revenue Percentage, as the case may be. In the case of a reduction in the percentage of revenue on which a right-of-way-access fee may be based, the Revenue Percentage will be commensurately reduced. Notwithstanding anything to the contrary herein, in the event of a change in law that preempts this Agreement and requires or allows an increase to the percentage of Gross Revenue above the Revenue Percentage which the City may charge a provider of communications services as a license fee for use of the Public ROW, then upon the legally required act by the City's governing body, Licensee shall upon 60 days' prior written notice from the City pay the City such license fee determined by the governing body to apply to all providers of Broadband Internet Services in the City, not to exceed the maximum allowed by law.

6. **Indemnification.**

- 6.1. Obligations. Licensee hereby agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, and insurance carriers, individually and collectively from all losses, claims, suits, judgments, demands, expenses, subrogation, reasonable attorney's fees, costs or actions of any kind and nature resulting from personal or bodily injury to any person, including employees of Licensee or of any contractor or subcontractor employed by Licensee (including bodily injury and death) or damages to any property, arising directly out of the negligent acts or omissions of Licensee, its contractors, subcontractors, officers, agents and employees while exercising any of the rights or privileges granted by this Agreement, except for any loss, injury, or personal or property damage caused by the negligence or willful misconduct of the City, its officials, officers, agents, employees, or insurance carriers; and provided, further, that Licensee's indemnification and defense obligations will not apply to any claims made by City's employees that are covered under applicable workers' compensation laws. This Subsection 6.1 shall survive the termination of this Agreement.
- 6.2. Notice of Claims. City will give prompt written notice to Licensee of any Claim or threatened Claim no later than fifteen (15) calendar days after City receives written notice of the action, suit, or proceeding or threat of the same. City's failure to give the required notice will not relieve Licensee from its obligation to indemnify City unless, and only to the extent that, Licensee is materially prejudiced by such failure.
- 6.3. Defense. Licensee will have the right at any time, by notice to City, to participate in or assume control of, the defense of the Claim with counsel of its choice, which counsel must be reasonably acceptable to City. City agrees to cooperate fully with Licensee and City will have the right to participate in the defense at its own expense. If Licensee does not assume control or otherwise participate in the defense of any Claim, Licensee will be bound by the results obtained by City with respect to the Claim. If Licensee

assumes the defense of a Claim, then in no event will City admit any liability with respect to, or settle, compromise or discharge, any Claim without Licensee's prior written consent.

7. **Limitation of Liability.** NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THIS LIMITATION WILL BE SUBJECT TO AND MAY BE LIMITED BY APPLICABLE STATE LAW.

8. **Security for Performance.**

- 8.1. **Form, Amount.** On or before commencement of the term of this Agreement, the Licensee shall post with the City a security fund in the form of a surety bond, letter of credit, or cash bond (together herein called "**Performance Bond**") in the amount of \$50,000 ("**Bond Amount**"). It is the Licensee's responsibility to maintain a Performance Bond in the Bond Amount throughout the Agreement term and for 90 days after the end of the term. Nothing in this paragraph shall preclude or prevent the City from requiring an additional bond amount pursuant to the Draper City Municipal Code. The form of Performance Bond shall be subject to approval as to content and form by the City Attorney. Among other provisions, the Performance Bond shall provide.
- 8.2. **Recovery.** That the City may recover on the Performance Bond upon the City's certification that the Licensee is in substantial default of this Agreement or City ordinances, and the amounts recoverable under the Performance Bond shall be recoverable jointly and severally from the Licensee and the surety, bank or financial institution which holds the account in which the cash bond is deposited, or from which the letter of credit issued.
- 8.3. **Surety Bond.** Any surety bond submitted hereunder shall be placed with a company licensed to do business in the State of Utah, shall have an A.M. Best's financial rating of A:-IX or better, and shall contain an endorsement in substantially the following form: This surety bond may not be canceled, allowed to lapse or the amount thereof reduced until at least thirty (30) days after receipt by the City Engineer, by certified mail, of a written notice from the issuer of the surety bond of its intent to cancel the surety bond, to allow it to lapse, or to reduce the amount of the surety bond.
- 8.4. **Use.** The City may draw on or make a claim against the Performance Bond to ensure the Licensee's faithful performance of its obligations of this Agreement in accordance with applicable law. If Licensee fails to perform its obligations under this License Agreement in any respect, including making any payment to the City required by this Agreement or by applicable law, and reimbursable costs incurred by the City, the City may, after thirty (30) days' written notice to the Licensee, withdraw or make a claim for that amount from the Performance Bond. The City shall notify the Licensee of the amount and date of any such withdrawal.
- 8.5. **Restoration of Fund.** Within forty-five (45) calendar days after the City gives Licensee written notice that an amount has been withdrawn from the Performance Bond or that the value of the Performance Bond has been reduced pursuant to Subsection 8.4 above, the Licensee must deposit a sum of money in the security fund or shall restore

the surety bond, cash bond sufficient to restore it to the Bond Amount. If Licensee fails to do so, such failure to restore shall be a material breach of this Agreement.

- 8.6. Return of Fund. If the Agreement terminates for any reason, and the Licensee has ceased to provide service in the City, the balance of the letter of credit or cash in the cash bond that remains following termination of the Agreement and satisfaction of all of Licensee's obligations secured by the security fund shall be returned to Licensee, or if the Licensee provided a surety bond to the City, then the City shall sign a release of the surety bond. The City shall be under no obligation to return funds until sufficient time has elapsed for the City to determine that all such obligations have been satisfied, which shall not be longer than 90 days from termination or the cessation of services in the City.
- 8.7. Default. Failure to maintain the Performance Bond required in this Section 8 shall be a substantial violation of this Agreement.
- 8.8. Other Remedies. Nothing in this Section 8 shall prevent the City from other legal remedies it may have against the Licensee if Licensee defaults in any of its obligations under this Agreement, including filing a lawsuit.

## 9. Insurance.

- 9.1. Licensee will carry and maintain Commercial General Liability (CGL) insurance, with policy limits not less than \$2,000,000 in aggregate and \$2,000,000 for each occurrence covering bodily injury and property damage with the following features: (a) CGL primary insurance endorsement; and (b) CGL policy will include an endorsement that names City, its employees, and officers as additional insureds. Licensee shall increase the commercial general liability limits contained herein to cover any increase in the City's potential liability under the Utah Governmental Immunity Act (Utah Code Ann. § 63G-7-101, et. seq.) or successor provision.
- 9.2. Licensee shall also file with the City Recorder a certificate of insurance for a comprehensive automobile liability insurance policy written by a company authorized to do business in the State of Utah with an A.M. Best rating of at least A-IX for all owned, non-owned, hired and leased vehicles operated by Licensee, with limits not less than Four Million Dollars (\$4,000,000.00) each accident, single limit, bodily injury and property damage combined.
- 9.3. Licensee shall also maintain, and by its acceptance of any License granted hereunder, specifically agrees that it will continually maintain throughout the term of the Agreement, workers compensation and employers liability, valid in the State, in the minimum amount of the statutory limit for workers compensation and Five Hundred Thousand Dollars (\$500,000) for employer's liability.
- 9.4. All liability insurance required pursuant to this Section 9, except for employers' liability shall name Draper City and its officers, employees, board members and elected officials as additional insureds (as the interests of each insured may appear) and shall be kept in full force and effect by Licensee during the existence of the franchise and until after the removal or abandonment with the approval by the Director of Public Works of all poles, wires, cables, underground conduits, manholes and any other conductors and fixtures installed by Licensee incident to the maintenance and operation of the communications system as defined in this Agreement. Failure to

obtain and maintain continuously the required insurance shall constitute a substantial violation of this agreement. Licensee will provide City with notice of cancellation of any policy required above in accordance with policy provisions. Licensee may utilize primary and umbrella liability insurance policies to satisfy insurance policy limit requirements in this Section 8, Insurance.

- 9.5. All insurance certificates, endorsements, coverage verifications and other items required pursuant to this Agreement will be mailed directly to City's insurance compliance representative upon City's written request.
10. **Effective Date and Term.** This Agreement is effective on the later of (a) the date the last party to sign executes this Agreement and (b) the date on which any implementing ordinance becomes effective in accordance with its terms and state law ("**Effective Date**"). The License will expire automatically on the fifteenth anniversary of the Effective Date ("**Original Term**"), unless Licensee provides written notice of its intent to renew to City at least six (6) months prior to expiration and City does not object after thirty (30) days. The renewal term will be for five (5) years, and the same renewal process may be used for successive 5-year terms.
11. **Termination.**
- 11.1. **Termination by City.** City may terminate this Agreement if Licensee is in material breach of the Agreement, provided that City must first provide Licensee written notice of the breach and ninety (90) days to cure, unless the cure cannot reasonably be accomplished in that time period, in which case Licensee must commence its efforts to cure within that time period and the cure period shall continue as long as such diligent efforts continue. No termination under this paragraph will be effective until the relevant cure period has expired.
- 11.2. **Termination by Licensee.** Licensee may terminate this Agreement for convenience upon one hundred eighty (180) days' written notice to City.
12. **Assignment.** Except as set forth below, neither party may assign or transfer its rights or obligations under this Agreement, in whole or part, to a third party, without the written consent of the other party. Any agreed upon assignee will take the place of the assigning party, and the assigning party will be released from all of its rights and obligations upon such assignment.
- 12.1. Notwithstanding the foregoing, Licensee may at any time, on written notice to City, assign this Agreement and/or any or all of its rights and obligations under this Agreement:
- 12.1.1. to any Affiliate (as defined below) of Licensee;
- 12.1.2. to any purchaser of all or substantially all of Licensee's Network Facilities in City if Licensee determines after a reasonable investigation that the purchaser has the resources and ability to fulfill the obligations of this Agreement;
- 12.1.3. Subject to City's consent, which will not be unreasonably withheld, conditioned, or delayed, Licensee may assign to any successor in interest of Licensee's business operations in City in connection with any merger, acquisition, or similar transaction if Licensee determines after a reasonable investigation that the successor in interest has the resources and ability to fulfill the obligations of this Agreement.

- 12.2. Following any assignment of this Agreement to an Affiliate, Licensee will remain responsible for such Affiliate's performance under the terms of this Agreement. For purposes of this Agreement, (i) "Affiliate" means any Person that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Licensee; and (ii) "control" means, with respect to: (a) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or (b) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (c) any other Person, fifty percent (50%) or more ownership interest in said Person, or the power to direct the management of such Person.
13. **Notice.** All notices related to this Agreement will be in writing and sent, if to Licensee to the email addresses set forth below, and if to City to the address set forth in City's signature block to this Agreement. Notices are effective (a) when delivered in person, (b) upon confirmation of a receipt when transmitted by facsimile transmission or by electronic mail, (c) on the next business day if transmitted by registered or certified mail, postage prepaid (with confirmation of delivery), (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) days after the date of mailing, whichever is earlier.
- Licensee's e-mail address for notice is [googlefibernotices@google.com](mailto:googlefibernotices@google.com), with a copy to [legal-notices@google.com](mailto:legal-notices@google.com).
14. **General Provisions.** This Agreement is governed by the laws of the State of Utah. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control. The parties agree to meet at reasonable times on reasonable notice to discuss this Agreement or Licensee's provision of Broadband Internet Services during the term of the Agreement. This Agreement sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties relating to its subject matter. This Agreement, including any exhibits, constitutes the entire agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by the parties. The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument. Each party to this Agreement agrees that Licensee may use electronic signatures.

*[Signature page follows]*



Signed by authorized representatives of the parties on the dates written below.

**GOOGLE FIBER UTAH, LLC**

**CITY OF DRAPER**

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

Address:  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

Address:  
\_\_\_\_\_

Email address: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A  
FORM OF LETTER OF AUTHORIZATION**

[LICENSEE LETTERHEAD]

[Date]

Via Email ([Email Address])

City of Draper

[Addressee]

[Address]

Re: [Amended] Letter of Authorization

Dear [Name],

In accordance with Section 4.3 of the License Agreement dated [ ] between the City of Draper and Google Fiber Utah, LLC ("**Google Fiber**"), Google Fiber hereby designates the following Authorized Individuals (as that term is defined in the Agreement), who may submit and sign permit applications and other submissions to the City on behalf of Google Fiber.

*{Insert name and title for each Authorized Individual, including any Authorized Individual previously named and whose authority continues. Strike through the names of any individuals who are no longer authorized, if any.}*

1. Name, Title
2. Name, Title
3. Name, Title (previously authorized, authorization continues)
4. ~~Name, Title~~ (authorization withdrawn)

This authorization may be withdrawn or amended and superseded by a written amendment to this Letter of Authorization, which will be effective 24 hours after receipt by the City.

Kind regards,

[Name]

Manager, Google Fiber Utah, LLC